IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5204 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATHABHAI RANCHHODBHAI PATEL - Appellant(s)
Versus
FAZALMAHMMAD HAJI GULAMNABI MEMON & 1 - Defendant(s)

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Appearance :
MR RN SHAH for Appellant(s) : 1,
MR MP PRAJAPATI for Defendant(s) : 1,
MR JD AJMERA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Aux.), Sabarkantha at Himatnagar passed in M.A.C.P. No. 741 of 1993 dated 31st July, 1998 whereby the Tribunal partly allowed the said petition.

2.0 The brief facts of the case are that on 16.06.1993, present appellant along with other

persons hired a tempo to transport 'Cumin' to Unjha Market Yard which was driven and owned by the present opponent No.1. While they were proceeding towards Unjha, the said tempo went turtle. On account of the said accident, the appellant received serious bodily injuries, and therefore, he filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and order which is under challenge in this appeal.

3.0 Heard learned Counsel for the parties. It was the case of the appellant before the Tribunal that on the day of incident, when the appellant along with other persons were proceeding towards Unjha in the aforesaid vehicle, opponent No.1 was driving the vehicle in question in rash and negligent manner and on account of that accident in question took place. However, the opponent No.1 in police complaint

(Exh.25) filed by him has stated that on account of the sudden burst of the tyre, the vehicle in question went turtle and the accident took place. However, the story narrated by the opponent No.1 in police complaint filed by him, was not believed by the Tribunal. On the contrary, from perusal of 'Panchnama' (Exh.26) it clearly transpires that the vehicle and the bags of 'Cumin' seeds were laying down on the road and there were large break marks which clearly goes to show that the vehicle was being driven in rash and negligent manner. It may also be noted that opponent No.1 had not appeared before the Tribunal to support his case that the accident was a result of a technical fault. Therefore, the Tribunal is justified in holding that the accident in question took place on account of the sole negligence on the part of the opponent No.1, and hence, the appellant is entitled for compensation.

3.1 As regards the contention of the learned

Advocate for the appellant that the Tribunal ought not to have exonerated opponent No.2-Insurance Company from liability to satisfy the claim is concerned, it would be relevant to refer to a decision of the Apex Court in the case of ***"Mallawwa and Others Vs. Oriental Insurance Co. Ltd. And Others"*** reported in 1999 ACJ 1 wherein at Para-23, the Apex Court has observed as under,

> **"23.** There is another aspect of the matter which had led us to differ from the Full Bench decision of Rajasthan High Court. The same is what finds place in sub-section (2) of section 95. that sub-section specifies the limits of liability and clause (a) deals with goods vehicle; and in so far as the person traveling in goods vehicle is concerned, it has confined the liability to the employees only. This is an indicator, and almost a sure indicator, of the fact that legislature did not have in mind carrying of either the hirer of the vehicle or his employee in the goods vehicle, otherwise, clause(a) would have provided a limit of liability regarding such persons also."

3.2 In the case on hand, it is not in dispute that the vehicle in question was a goods vehicle which is evident from permit produced at (Exh.49). On perusal of Insurance Policy (Exh.54)of the

vehicle in question, it clearly transpires that the policy does not cover the risk of the passengers carried in the said vehicle. Therefore, in view of the fact that the appellant was traveling in the vehicle as illegal passenger and the principle laid down by the Apex Court in the case of ***"Mallawwa and Others"***(Supra), the Tribunal is justified in exonerating opponent No.2-Insurance Company from the liability to pay compensation.

3.3 While considering the aspect of compensation, the Tribunal has taken into consideration the medical and other evidence available on record. Looking to the nature of injuries sustained by the opponent No.1, the period of hospitalization and considering the fact that he was earning Rs.1,000/- per month, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellant for enhancement of the amount of compensation. I am, therefore, in complete agreement with the reasonings given and

the findings arrived at by the Tribunal and, hence, do not find any reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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